IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

W.P. No. 1217 of 2003 (M/B)

Sri Narendra Singh Mehra,
S/o Sri Thakur Singh Mehra,
President Khera Milk Producers Cooperative Society Ltd.,
Khera Golapar, Haldwani, ….. Petitioner.

Versus

State of Uttaranchal,
Through Pramukh Sachiv,
Uttaranchal Government, Van and Gramya Vikas Sakha,
Dairy Vikas Vibhag & others …Respondents.

Herd Mr. P.S. Adhikari, learned Advocate for the petitioner
Learned Chief Standing Counsel for the State.

Hon. P.C. Verma, A.C.J.,
Hon. Rajesh Tandon, J.

Heard Mr. P.S. Adhikari, learned Advocate for the petitioner and learned Chief Standing Counsel for the State.

By means of this writ petition, the petitioner seeks a writ of certiorari for quashing the impugned Joint Venture Agreement dted 27.08.2003 between Uttaranchal Cooperative Dairy Federation and Mother Dairy Foods Limited to create a joint venture company, which has been created and registered under the Companies Act. The Agreement is annexed as Annexure III and the Certificate of Incorporation issued by Company Registrar dated 17.10.2003 is annexed as Annexure IV to the writ petition.

Learned Counsel for the petitioner submitted that there was no resolution as mentioned in the Agreement and therefore, the Agreement executed is liable to be quashed as the share of the petitioner has also been transferred to joint venture, which it holds in the Uttaranchal Cooperative Dairy Federation as a Member.

From the submissions made above by the learned counsel for the petitioner, it is evident that it is a dispute between the Cooperative Society and its member i.e., between the Uttaranchal Cooperative Dairy Federation and president Khera Milk Producers Cooperative Society Ltd. under clause ‘d’ of sub-section 1 of Section 70. The Registrar, after receipt of such application, may refer the matter to the arbitrator. According to the rules, the arbitrator shall

decide the same if there is another reason not to entertain the writ petition. In the case of State of U.P. & another V/s C.O.D. Cheeoki Employees' Cooperative Society Ltd. & other reported in (1973)3 Supreme Court Cases 681, the Apex Court has held that it is not open for a Member to file a writ petition challenging the action taken under the Cooperative Society Act by saying that the stream cannot rise above the source. The petitioner may raise all the points before the Arbitrator when the dispute is referred under section 70 and the Arbitrator shall decide the same within a period of one month after entering upon the reference made under section 70 by the Registrar.

Subject to above, writ petition is dismissed. No order as to costs.

(Rajesh Tandon, J.) **(P.C. Verma, A.C.J.)**

Dt. 30.12.2003.

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